

These are the tentative rulings for civil law and motion matters set for Tuesday, February 17, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Friday, February 13, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. M-CV-0059469 AGI Publishing, Inc. vs. Dresner, Steven Alan**

Plaintiff's Motion to Deem Requests for Admission Admitted is granted. Plaintiff's first set of requests for admission are deemed admitted. Plaintiff is awarded attorneys' fees from defendant and defendant's counsel, jointly and severally, in the amount of \$500.

**2. M-CV-0062321 First National Bank of Omaha vs. Minor, Richard W.**

Appearance required. Defendant is once again advised that his notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(C).

Defendant's Motion to Set Aside Default and Grant Defendant Leave to Answer the Complaint is continued to March 24, 2015 at 8:30 a.m. in Department 40. The notice of motion states two different dates for the hearing. The caption of the notice provides a hearing date of February 17, 2015. However, the first paragraph of the notice provides a hearing date of January 13, 2015. Defendant is ordered to timely file and serve an amended notice of hearing for the continued date. The amended notice is to include the tentative ruling information required by Local 20.2.3.

**3. S-CV-0032113 Rose, Stephen, et al vs. Lennar Renaissance, Inc.**

Appearance required on February 17, 2015 at 8:30 a.m. in Department 40.

**4. S-CV-0033463 House, Stephen Michael, et al vs. Whittle, Joseph, et al**

**Motion to Have Requests for Admissions Deemed Admitted**

Defendants' Motion to Have Requests for Admissions Deemed Admitted is denied.

Defendants assert that they served Request for Admissions, Set One, on plaintiff California Almond Pollination Service, Inc. (CAPS) on November 18, 2014. Plaintiff's counsel states that he never received these discovery requests. The proof of service attached to the discovery at issue stated that the discovery was served on August 21, 2014. An amended proof of service was purportedly signed and served on plaintiff on December 16, 2014, by which the declarant averred that she served defendants' Request for Admissions, Set One on November 18, 2014.

The issue with the erroneous proof of service is not an isolated incident. The court tentatively indicated that it would deny defendants' previous motion to compel based on a proof of service that did not correctly identify the subject discovery. Defendants have filed another motion to compel, addressed below, that also contains issues with the proofs of service. In light of these recurring issues, and the length of time that transpired before a corrected proof of service was purportedly served on plaintiff, the court finds plaintiff's contention that the discovery was never received to be credible. Accordingly, the motion is denied.

**Motion to Compel Responses to Discovery to CAPS**

Defendants' Motion to Compel Responses to Form Interrogatories, Special Interrogatories and Request for Production of Documents is granted in part, and denied in part.

Defendants assert that they served Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One, on CAPS on November 18, 2014. Plaintiff's counsel admits receiving the Request for Production of Documents, Set One, but denies receipt of the other discovery requests. The proof of service attached to the form interrogatories states that the discovery was served on November 18, 2014. The proof of service attached to the special interrogatories states that the discovery was served on August 21, 2014. The proof of service attached to the request for production of documents states that the discovery was served on August 14, 2014. An amended proof of service relating to the special interrogatories and requests for production was purportedly signed and served on plaintiff on December 16, 2014, by which the declarant averred that she served this discovery on November 18, 2014.

As plaintiff admits receipt of the request for production of documents, and as a valid proof of service attached to the subject discovery adequately demonstrates service of the form interrogatories, the motion is granted as to both. However, the motion is denied as the special interrogatories, as plaintiff denies receiving this discovery, and the issues with the proof of service lead the court to believe that plaintiff's contention is credible.

Plaintiff CAPS shall serve verified responses to Form Interrogatories, Set One, and Request for Production of Documents, Set One, without objections, by no later than March 13, 2015. Defendants' request for sanctions is denied.

Motion to Compel Responses to Discovery to Stephen House

Defendants' unopposed Motion to Compel Responses to Special Interrogatories, Set Two, and Request for Production of Documents, Set Two, is granted. Plaintiff Stephen House shall serve verified responses to Special Interrogatories, Set Two, and Request for Production of Documents, Set Two, without objections, by no later than March 13, 2015.

Defendants are awarded sanctions from plaintiff Stephen House and his counsel, jointly and severally, in the amount of \$310.

**5. S-CV-0033601 Hernandez, Allen, et al vs. Directv, Inc., et al**

Plaintiffs' Motion to Compel is ruled on as follows:

The motion to compel further responses to written discovery directed to defendant Mang Thao (Thao) is granted. Thao must provide further written responses to the subject discovery by no later than February 24, 2015. However, Request for Production No. 12 shall be limited to cell phone billings for the date of the incident.

The motion to compel deposition of Thao is granted. Thao is directed to appear and testify at his deposition on the date and time noticed by plaintiffs.

The motion to compel further responses to written discovery directed to defendant DirecTV is granted as to special interrogatory Nos. 1 and 33. While DirecTV's amended responses have cured most of the defects identified by plaintiffs, these responses remain deficient and/or incomplete. The motion is denied as to the remaining special interrogatories.

The motion to compel deposition testimony of the Person Most Qualified for DirecTV is granted. While DirecTV cites to case law regarding the admissibility of evidence at trial, plaintiffs are permitted to obtain discovery regarding any matter that is relevant to the subject matter involved, whether or not such information is later determined to be admissible at trial. DirecTV is directed to produce its Person Most Qualified for deposition on the date and time noticed by plaintiffs.

Plaintiffs' request for sanctions is denied as paragraph 25 of counsel's declaration is insufficient to establish the reasonableness and necessity of the amounts sought.

**6. S-CV-0034097 Ventura, Anthony vs. Rice, Jacqueline, et al**

Defendants' Motion for Order Substituting Jacqueline Rice as Real Party in Interest and for an Order Dismissing the Entire Action is granted.

Jacqueline Rice shall be substituted into the action as real party in interest in place of plaintiff Anthony Ventura. The action shall be dismissed with prejudice.

**7. S-CV-0034158 Mendoza, Eric vs. The Gar Wood Restaurant**

The Motion for Class Certification is continued February 24, 2015 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

**8. S-CV-0034359 Gray, Duane Bradley vs. Gray, Donly C., III, et al**

Defendants' Motion for Judgment on the Pleadings is denied.

The defense of laches may be raised by demurrer or motion for judgment on the pleadings where the face of the complaint discloses that the cause of action is barred by the doctrine. *King v. Los Angeles County Fair Ass'n* (1945) 70 Cal.App.2d 592, 596. The second amended complaint (SAC) alleges that plaintiff entered into a verbal agreement with his father for transfer of subject property in 1984, and that at that time, plaintiff took immediate exclusive occupancy and possession of the property. (SAC, ¶¶ 10, 11.) Plaintiff alleges that he performed all obligations on his part to consummate the agreement in May 1987, by payment of \$22,000, which accounted for a \$500 credit previously advanced. (SAC, ¶ 12.) From this point until 1995, the SAC discloses no adverse claims regarding plaintiff's purported title to the property. In 1995, plaintiff's father handwrote a letter affirming the existence of the agreement, but claiming that plaintiff had not made any payments for purchase of the property. (SAC, ¶ 13.) The SAC does not disclose whether or when this letter was provided to plaintiff.

While defendants argue that plaintiff unreasonably delayed over thirty years before bringing this action, the SAC alleges that plaintiff has enjoyed exclusive occupancy and possession of the property with no notice of adverse claims of possessory rights until his father's death in 2008. Upon review of the allegations of the SAC, the court does not find laches to be established at this stage in the proceedings.

Defendants shall file and serve their answer to the second amended complaint by no later than March 6, 2015.

**9. S-CV-0035173 Rassamni, A.J. vs. Herron, Jeanne, et al**

Plaintiff's Motion for Leave to File Second Amended Complaint is denied without prejudice. The proof of service in the court's file indicates that defendants were not provided sufficient notice of the motion, as they were personally served only 13 court days prior to the scheduled hearing date. Code Civ. Proc. § 1005(b).

**10. S-CV-0035241 Maclam, James R. vs. Fong, Richard C., et al**

Defendants' request for judicial notice is granted.

Defendants' Demurrer to First Amended Complaint is sustained in part, and overruled in part, as set forth below.

The function of a demurrer is to test the legal sufficiency of the complaint, not to challenge its truthfulness. *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994. In ruling on the demurrer, the court may only consider the face of the pleading under attack, and outside matters that are judicially noticeable. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. Accordingly, the court will not consider, for purposes of ruling on the demurrer, the declaration of plaintiff submitted in support of the opposition.

The demurrer is sustained with respect to plaintiff's second cause of action for breach of contract (third party beneficiary). A third party beneficiary contract is one "made expressly for the benefit of a third person." Civ. Code § 1559. A plaintiff claiming to be a third party beneficiary to enforce the terms of a contract "must plead a contract which was made expressly for his benefit and one in which it clearly appears that he was a beneficiary." *Cal. Emergency Physicians Med. Group v. PacificCare of Cal.* (2003) 111 Cal.App.4th 1127, 1138. In this case, plaintiff fails to plead a contract expressly made for his benefit. Further, as plaintiff fails to show how this cause of action could be amended to cure the defects, the demurrer is sustained as to the second cause of action without leave to amend.

The demurrer is also sustained with respect to plaintiff's seventh cause of action for breach of implied warranty, as to defendant Auburn Creeks Real Estate, Inc. (ACRE). Plaintiff fails to allege notice of breach of the warranty to ACRE. Plaintiff is granted leave to amend this cause of action.

Upon review of the factual allegations of first amended complaint as a whole, the court finds that plaintiff's third cause of action for negligence and fourth cause of action for fraud adequately allege valid causes of action, and are not, on their face, barred by the statute of limitations. Accordingly, the demurrer is overruled as to the third and fourth causes of action.

Plaintiff shall file and serve any amended complaint by no later than March 6, 2015.

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